

Application No.: 10/690,817

Docket No.: 2038-303

REMARKS

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1-2 and 4-23 are pending in the application. Claim 3 has been cancelled without prejudice or disclaimer. Claim 2 has been amended to include the subject matter of claim 3. Claims 1-2 and 4-7 have been amended to better define the claimed invention. New claims 8-23 have been added to provide Applicants with the scope of protection to which they are believed entitled. The Abstract has been placed in US complaint form. No new matter has been introduced through the foregoing amendments.

The art rejections relying primarily on *Williams* (U.S. Patent No. 6,641,567) are believed overcome in view of the above amendments.

In particular, independent claim 1 has been amended to recite, among other things, a holder member which comprises a high elasticity segment having an X-shape and extending from a periphery of said through-hole towards transversely opposite side edge portions of said front and rear waist regions; and a low elasticity segment located outside said high elasticity segment. The newly added feature finds solid support in the original specification, at pages 6-7 of the specification. An advantage of the disclosed embodiment including the claimed feature resides in the enhanced fitting of the holder member to the wearer. *Williams* does not appear to teach or suggest such claim feature and/or provide the disclosed advantage. The deficiency is not deemed curable by the teaching reference of *Washington* (U.S. Patent No. 4,886,508).

Accordingly, Applicants respectfully submit that amended claim 1 is patentable over the applied references.

Claims 2 and 4-13 depend from claim 1, and are considered patentable at least for the reason advanced with respect to amended claim 1. The dependent claims are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art.

As to claim 4, Applicants respectfully disagree with the Examiner's reliance on column 2, lines 40-47 of *Washington* for the claimed annular portion which comprises flexible and elastically

Application No.: 10/690,817

Docket No.: 2038-303

compressible foamed plastic. The cited passage discloses that the *Washington* catheter body 12 (FIGs. 1, 4) is made of a resiliently deformable material. This teaching is irrelevant to the claimed annular portion which is part of the claimed discharge receiving member. A person of ordinary skill in the art would recognize that catheter body 12 of *Washington* is equivalent to another component, i.e., the claimed holder member or diaper 11 of *Williams*. See FIG. 4 and column 4, lines 54-56 of *Washington*. Thus, the person of ordinary skill in the art would have been motivated, if at all, only to make the holder member 11 (FIG. 5) of *Williams* from resiliently deformable material as taught by *Washington*. Such a hypothetical article would still include the annular portion 22 of *Williams* which is not disclosed or suggested to be flexible and elastically compressible as presently claimed. Thus, the references are not combinable in the manner the Examiner proposes and fail to teach or suggest the highlighted limitation of claim 4.

As to claims 5 and 11, the applied references, especially *Williams*, do not fairly teach or suggest the claimed discharge containing portion enlargeable under a weight of the discharge received in said discharge containing portion. This claim feature finds support in page 11, lines 7-14 of the original specification. In *Williams*, receiver 26 appears to be a glass/plastic bottle and is not disclosed to be at all enlargeable.

As to claims 7-10, the applied references, especially *Williams*, do not fairly teach or suggest the claimed X-shaped elastically stretchable sheet bonded to at least one of said topsheet and backsheet and defining said high elasticity segment.

As to claims 12 and 13, the applied references, especially *Williams*, do not fairly teach or suggest the claimed absorbent material in the discharge containing portion. This claim feature finds support in at least FIG. 3 at 57. In *Williams*, receiver 26 is a transparent bottle and the presence of measurement markings 27 on the bottle wall indicates that absorption of bodily discharge is not desirable. Modifying the bottle of *Williams* to include absorbent material would defeat the intended purpose of measurement markings 27, i.e., precisely measuring the amount of bodily discharge, and therefore, would not have been made by a person of ordinary skill in the art.

New independent claim 14 includes a limitation similar to that of claim 12, and is believed patentable over the art for the reason advanced immediately above with respect to claim 12.

Application No.: 10/690,817**Docket No.: 2038-303**

Claims 15-19 depend from claim 14, and are considered patentable at least for the reason advanced with respect to claim 14. The dependent claims are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art, as discussed above with respect to, e.g., claims 4 and 5.

New independent claim 20 includes limitations similar to those of claim 14, and is believed patentable over the art for the reason advanced immediately above with respect to claim 14.

Claims 21-23 depend from claim 20, and are considered patentable at least for the reason advanced with respect to claim 20. The dependent claims are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art, as discussed above with respect to claims 15-19.

Each of the Examiner's rejections has been traversed/overcome. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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Date: March 20, 2006
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